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11

12 **UNITED STATES BANKRUPTCY COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**
SAN FRANCISCO DIVISION

14 In re	) Case No. 19-30088 (DM)
15 PG&E CORPORATION,)
16 and	) Chapter 11
17 PACIFIC GAS AND ELECTRIC	) (Lead Case – Jointly Administered)
18 COMPANY)
19 Debtors	) THE SINGLETON LAW FIRM FIRE
	) VICTIM CLAIMANTS (1) REPLY IN
	) SUPPORT OF DEBTORS' AND
20 Affects:	) SHAREHOLDER PROPONENTS'
21 <input type="checkbox"/> PG&E Corporation	) JOINT CHAPTER 11 PLAN OF
22 <input type="checkbox"/> Pacific Gas & Electric Company	) REORGANIZATION DATED
23 <input checked="" type="checkbox"/> Both Debtors	) MARCH 16, 2020; AND (2) LIMITED
	) JOINDER IN THE OBJECTION OF
24 * All papers shall be filed in the Lead	) THE OFFICIAL COMMITTEE OF
25 Case No. 19-30088 (DM).	) TORT CLAIMANTS TO
	) CONFIRMATION OF DEBTORS'
	) AND SHAREHOLDER
	) PROPONENTS' JOINT CHAPTER
	) 11 PLAN OF REORGANIZATION
	) DATED MARCH 16, 2020

1) (Docket No. 7306)
2)
3) **Hearing Date:**
4)
5) Date: May 27, 2020
6) Time: 10:00 a.m. (Pacific)
7) Place: Telephonic Appearance Only
8) United States Bankruptcy
Courtroom 17, 16th Floor
San Francisco, CA 94102

9 TO THE COURT, ALL COUNSEL, AND ALL INTERESTED PARTIES
10 The Singleton Law Firm (“SLF”), who together with their co-counsel, represent
11 roughly 7,000 individual fire victim claimants (“SLF Fire Victim Claimants”), hereby
12 file this pleading to (1) support *Confirmation of Debtors’ and Shareholder*
13 *Proponents’ Joint Chapter 11 Plan of Reorganization Dated March 16, 2020* and (2)
14 join in certain arguments raised in the *Objection of the Official Committee of Tort*
15 *Claimants to Confirmation of Debtors’ and Shareholder Proponents’ Joint Chapter 11*
16 *Plan of Reorganization Dated March 16, 2020* (Docket No. 7306) filed on May 15,
17 2020.

18 **I. SUMMARY**

19 The SLF Fire Victim Claimants support confirmation of the Plan.¹ We have
20 raised the following limited objections because, as noted by the Official Committee of
21 Tort Claimants (“TCC”), the current iteration of the Plan does not integrate all parts of
22 the RSA. As it stands, there are Plan provisions that fall short of what was
23 memorialized in the RSA. Specifically, the Plan’s current language regarding claims
24 assigned to the Fire Victim Trust (“Trust”) is more restrictive than that of the RSA and
25

26
27 ¹ Terms not defined herein are as defined in the *Objection of the Official Committee of Tort*
28 *Claimants to Confirmation of Debtors’ and Shareholder Proponents’ Joint Chapter 11 Plan of*
Reorganization Dated March 16, 2020 (Docket No. 7306) filed on May 15, 2020.

1 may result in future disputes over whether certain third-party claims were assigned to
2 the Trust. The Plan's current language also broadens the definition of a Subrogation
3 Wildfire Claim, which may result in increased claims against the Trust.

4 Additionally, the SLF Fire Victim Claimants agree with the TCC that a
5 "reasonable" registration rights agreement is needed that does not favor equity at the
6 expense of Fire Victims.

7 Finally, Debtors should not have with the sole ability to bind others based on
8 their interpretation of the Plan. To the extent that the parties cannot agree, disputes
9 should be resolved by the Court.

10 **II. GENERAL SUPPORT OF PLAN SUBJECT TO CLARIFICATIONS**

11 **A. Confirmation of Assigned Claims Versus Retained Claims**

12 All rights and causes of action bargained for as part of the RSA should be
13 assigned to the Fire Victim Trust, and any proposal that seeks to limit the Assigned
14 Rights and Causes of Action beyond what is provided for in the RSA is impermissible.

15 Although the RSA and the Plan contain the same definition of Assigned Rights
16 and Causes of Action [Compare, Plan § 1.189 and RSA/Settlement Amendment,
17 Article I] the supplement filed by Debtors on May 1 seems to expand the scope of their
18 retained rights. *See*, Dkt. No. 7037, pp. 1933-1937 ("Debtors' Schedule"). To the
19 extent there is confusion about the scope of the Assigned Claims and Causes of Action,
20 the RSA should be referred to as it is clear as to what "Assigned Rights and Causes of
21 Action" encompasses:

22 any and all rights, claims, causes of action, and defenses related thereto
23 relating directly or indirectly to any of the Fires that the Debtors may
24 have against vendors, suppliers, third party contractors and consultants
25 (including those who provided services regarding the Debtors' electrical
26 system, system equipment, inspection and maintenance of the system,
27 and vegetation management), former directors and officers of the Debtors
28 solely to the extent of any directors and officers Side B insurance
coverage, and others as mutually agreed upon by the Plan Proponents and
identified in the Schedule of Assigned Rights and Causes of Action.

1 See RSA/Settlement Amendment, Article I.

2 This language includes both claims (1) against third party contractors based on
3 breach of contract, aiding and abetting the wrongful acts of Directors and Officers,
4 property damage, professional negligence, and other claims sounding in tort; and (2)
5 against insurance companies and other similar vendors, many of which arise from the
6 Debtors' contracted right to be an "additional insured" in Third Parties' insurance
7 policies.

8 Debtors' Schedule seems to infringe on these claims such that the Trust might be
9 limited to insurance recovery only and thus lose all the claims noted by the TCC,
10 including: (1) contractual indemnity claims not already asserted by the Debtors; (2)
11 claims for property damage caused by Fires; (3) claims that pertain "indirectly" to the
12 Fires; and (4) all claims that do not arise from "causation" of the Fires; and (5) claims
13 for fraud, negligence or other common law counts that cannot be described as "a
14 failure to provide contracted services in the manner required by the applicable
15 contract" would be lost to the Trust.

16 Adopting Debtors' Schedule would significantly reduce the value of the
17 previously bargained for Assigned Claims set forth in the RSA.

18 **Proposed Solution:** As noted by the TCC, the Court should: (1) confirm that the
19 RSA's definition of Assigned Claims as incorporated into § 1.8 of the Plan is the
20 controlling language; (2) strike the Debtors' Schedule from the Plan; and (3) find that
21 the TCC Schedule is the operative Schedule of Assigned Rights and Causes of Action
22 for purposes of providing notice by Plan confirmation of the nature and scope of
23 Assigned Claims. Alternatively, the Court should require the Debtors to compensate
24 the Fire Victim Trust for the value of all claims that would have been assigned to the
25 Trust under the language of the RSA but which are not assigned due to the new
26 language adopted by the Debtors.

27 //

28 //

1 **B. Per the RSA, a “Reasonable” Registration Rights Agreement that**
2 **Does Not Favor Equity Over the Fire Victims is Required**

3 All parties can agree that the stock Registration Rights Agreement is a crucial
4 part of the RSA. The issue is that Debtors have failed to provide a required
5 “reasonable” Registration Rights Agreement, which would provide the Fire Victim
6 Trust with the same registration and lock-up terms as the insider Equity Backstop
7 Parties. *See*, RSA/Settlement Amendment, at § 3. Under the Debtors’ scenario, Fire
8 Victim Trust will have to wait before the stock can be resold and lead to cash payments
9 to Fire Victims, while Equity Backstop Parties would not have this impediment. Under
10 the TCC’s proposed scenario, the Fire Victim Trust would have rights no less
11 favorable than the Equity Backstop Parties.

12 **Proposed Solution:** The Court should order the imposition of a “reasonable”
13 Registration Rights Agreement that treats the Fire Victims Trust the same as the Equity
14 Backstop Parties.

15 **C. Added Exception to The Subrogation Wildfire Claim Definition**
16 **Should Not Be Permitted If It Inequitably Shifts More Claims to the**
17 **Fire Victim Trust**

18 As noted by the TCC, the definition of “Subrogation Wildfire Claim” has been
19 amended to add a new exception/exclusion: “(b) any Fire Claim asserting direct injury
20 to a fire victim, regardless of whether the claimant is an insured and has received or
21 will receive a recovery from their insurer, and any such claims are not the subject of, or
22 compromised under, the Subrogation Claims RSA.” *See*, Plan, Dkt. No. 6320 at §
23 1.201.

24 The potential effect of the amendment is permit claims that otherwise would
25 have to be satisfied from the Subrogation Trust to be satisfied from the Fire Victim
26 Trust. Fortunately, such a result is insulated by language in the Fire Victim Trust
27 providing the Fire Victim Trust will hold setoff rights against any Fire Victim’s claim
28 in the amount of insurance benefits that have not been paid. *See*, Dk. No. 7306, Exhibit

1 T to Richardson Decl., at p. 1874, Section 2.6; and p. 1911, Section X.A. The Fire
2 Victim Trust was a tremendous undertaking by various professionals to ensure
3 certainty and fairness for Fire Victims. If newly added exception/exclusion to the
4 definition of Subrogation Wildfire Claim means the delicate balance struck by various
5 parties will be disturbed such an amendment should not be permitted.

6 **Proposed Solution:** The Court should (1) approve the Fire Victim Trust
7 Agreement as filed as it relates to the Fire Victim Trust’s right to set off potential
8 insurance recoveries, or (2) restore the definition of “Subrogation Wildfire Claim” that
9 existed in the November Plan when the RSA was approved; and (3) confirm that
10 nothing in the Plan or Subrogation RSA releases any insurer from its ongoing
11 contractual or equitable obligations to any Fire Victim under their policy.

12 **D. The Reorganized Debtors Should Not Have the Exclusive Right to**
13 **Unilaterally Interpret the Plan**

14 Lastly, the current language of the Plan appears to assign to the Debtors the
15 unilateral authority to interpret the Plan:

16 “Interpretation; Application of Definitions and Rules of Construction,”
17 subpart (j) any “effectuating provisions²” *may* be interpreted “by the
18 Reorganized Debtors in a manner consistent with the overall purpose and
19 intent of the Plan, all without further notice to or action, order, or
20 approval of the court or any other entity, and such interpretation shall
control in all respects.”

21 *See*, Plan, Dkt. No. 6320 at pg. 42 of 107 (emphasis added).

22 While this provision states that Debtors may interpret any effectuating
23 provisions “in a manner consistent with the overall purpose and intent of the Plan,” it
24 does not require Debtors to do so. *Id.* Similarly, the current language of this provision
25 does not allow any other party to offer an alternative interpretation. Carried to its
26 logical conclusion, this provision would improperly grant the Debtors the exclusive

27 ² “Effectuating provisions” is an undefined term and vague.
28

1 right to interpret Plan provisions, cutting off creditors' due process rights and usurping
2 court authority. Since the SLF Fire Victim Claimants are confident this was not the
3 Debtors' intent in drafting this language, this appears to be a drafting issue that can be
4 readily resolved.

5 **Proposed Solution:** Subpart (j) of Article I, "*Interpretation; Application of*
6 *Definitions and Rules of Construction*", of the Plan should be revised as follows:

7 (j) ~~any effectuating provisions may the Plan will~~ be interpreted ~~by the~~
8 ~~Reorganized Debtors~~ in a manner consistent with the overall purpose and
9 intent of the Plan ~~, all without further notice to or action, order, or~~
10 ~~approval of the court or any other entity, and such interpretation shall~~
~~control in all respects.~~

11 **E. Reservation of Rights regarding Objections Raised by the United**
12 **States Trustee**

13 The SLF Fire Victim Claimants reserve their rights with respect to all objections
14 raised by the Office of the United States Trustee. *See*, Dkt. No. 7283.

15 **III. CONCLUSION**

16 While the SLF Fire Victim Claimants support the Plan, they respectfully request
17 that the Court make modify and clarify the current language of the Plan as requested
18 herein.

19
20 Dated: May 22, 2020

Respectfully submitted,

MARSHACK HAYS LLP

21 By: /s Richard A. Marshack

22 RICHARD A. MARSHACK
LAILA MASUD

23 Dated: May 22, 2020

SINGLETON LAW FIRM, APC

24 By: /s Gerald Singleton

25 Gerald Singleton
26 John C. Lemon

27 Attorneys for the SLF Fire Victim Claimants
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